

Chapter 13

PERSONNEL*

* **Charter References:** Employee relations board, § 12; administrative officers, § 42.
Cross References: Bonds for city employees, § 2-3.

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ARTICLE I.

IN GENERAL

Sec. 13-1. Scope.

The provisions of this chapter shall apply to all city employees who are paid a salary, whether on an hourly, weekly, monthly or yearly basis, and who are not elected. The provisions of this chapter shall not apply to the city manager, city solicitor or to the members of any boards, commissions or committees appointed by the city council.

(Code 1971, § 15-1)

Sec. 13-2. Personnel officer.

(a) The responsibility for administering the provisions of this chapter and the general supervision of the classified service is vested in the city manager, who is hereby designated personnel officer.

(b) The personnel officer shall be responsible for:

- (1) The administration of rates of compensation covering all classes of positions in the classified service after adoption of such rates by the city council.
- (2) Recruiting, examining, investigating and determining qualifications of applicants for all positions in the classified service.
- (3) The appointment, transfer, promotion, demotion, suspension, dismissal or any other change in status of an employee, subject to the provisions of this chapter.
- (4) The maintenance of appropriate personnel records.
- (5) Recommending to the council the establishment of new positions when necessary. However, it is desirable that any new position be established only at budget time to become effective with the new fiscal year.
- (6) Recommending measures to the city council calculated to increase efficiency and to promote the interest and welfare of employees.
- (7) Devising necessary administrative procedures to execute the personnel policies promulgated by the city council.
- (8) Administering such rules and procedures as may be set forth by the council relating to the classified service.

(Code 1971, § 15-3)

Secs. 13-3–13-20. Reserved.

ARTICLE II.
CLASSIFICATION*

* **Cross References:** Job classification of city manager, § 2-2.

DIVISION 1.
GENERALLY

Sec. 13-21. Scope; exempt service.

All offices and positions of the city are divided into the classified service and the exempt service. The exempt service shall include the following:

- (1) Those positions exempted from the provisions of this chapter by section 13-1.
- (2) Temporary, seasonal, provisional, emergency service or part-time employees not specially included in the classified service by action of council.

The classified service shall include all other positions in the city service.
(Code 1971, § 15-6)

Charter References: Classification, § 42.

Sec. 13-22. Part-time classified positions.

Positions which are designated as part-time classified positions and which require a regular tour of duty in each pay period throughout the year less than the eighty (80) hours but more than thirty-five (35) hours per pay period shall be designated part-time classified employees and shall be paid at the hourly rate for the grade and step under which the position is classified, multiplied by the number of hours worked in each pay period. All such part-time classified positions shall be subject to leave privileges as defined in this chapter.
(Code 1971, § 15-7; Ord. No. 944, 8-8-83)

Sec. 13-23. Nonclassified appointments.

(a) Nonclassified appointments may be made by the personnel officer for periods not to exceed six (6) months for temporary assignments, special details and miscellaneous work, and such employees shall be designated as nonclassified employees. Nonclassified positions shall not be entitled to any type of leave privileges, retirement benefits, insurance or extra pay for holiday work.

(b) Personnel subject to appointment by the personnel officer and not covered under the classified service as provided in section 13-21 shall serve at the discretion of the personnel officer.
(Code 1971, § 15-8)

Sec. 13-24. Tenure of positions.

Classified service employees of the city shall be granted tenure in their positions subject to the provisions of this chapter.
(Code 1971, § 15-9)

Sec. 13-25. Hours of work for classified employees--Department heads.

The basic workweek for the heads of the public works, finance, police and recreation department shall be those hours necessary to carry out their respective departmental responsibilities as determined by the city manager.
(Code 1971, § 15-49; Ord. No. 1028, 11-14-88)

Sec. 13-26. Same--Other employees.

(a) The basic workweek for all full-time, per annum classified service employees shall be forty (40) hours of duty; and for those employees whose tour of duty is irregular or intermittent, the basic workweek shall be the first forty (40) hours of duty performed within the administrative workweek; and the administrative workweek shall be a period starting at 12:01 a.m., Sunday, and continuing for the first forty (40) hours of work through seven (7) consecutive days. However, whenever necessary, the manager may establish any forty-hour work period as the administrative workweek.

(b) Any time allowed for meals shall not be considered part of the normal workday.

(c) The basic workweek for the full-time, per annum classified service employees of Greenbelt Cares Youth Service Bureau shall be either forty (40) hours or thirty-five and one-half (35 1/2) hours of duty. Such employees working less than forty (40) hours shall be considered as part-time classified service employees for the purpose of earning sick and annual leave and determining hours of time paid for city holidays, but shall be considered as full-time classified employees for all other purposes and shall be entitled to all other benefits made available to full-time classified employees.

(d) Police officers who work a scheduled shift may work a schedule that is less than or exceeds eight (8) hours a day or forty (40) hours a week, provided that the hours of work scheduled within a twenty-eight-day period not exceed one hundred seventy-one (171) hours and provided that the average number of hours in a week in an established shift schedule plan shall not exceed forty (40) hours. In no event shall a police officer be scheduled to work more than twelve (12) hours a day (twenty-four-hour period) or one hundred seventy-one (171) hours in a twenty-eight-day period, unless overtime compensation is rendered for the excess scheduled hours. If a police officer takes leave for a scheduled workday the amount of hours of leave taken by the employee shall equal the amount of hours of work scheduled for that day. Any police officer performing shift work who works more than the number of hours scheduled for a day or who works during nonscheduled hours shall receive overtime compensation for the excess worked as provided in section 13-104, Overtime.
(Code 1971, § 15-50; Ord. No. 963, 2-11-85; Ord. No. 1028, 11-14-88; Ord. No. 1064, 3-25-91)

Secs. 13-27--13-30. Reserved.

DIVISION 2.

PLAN

Sec. 13-31. Establishment.

(a) The city manager shall make an analysis of the duties and responsibilities of all positions in the classified service and he shall recommend a position classification plan to the council. The council shall thereafter approve a classification plan. Upon recommendations of the city manager and with the approval of the council, the classification plan shall be revised from time to time as changing conditions require.

(b) The classification plan and revisions thereto shall be approved by motion of council; provided, that such approval shall not be made at the same meeting at which the recommendation of the city manager to council is presented except with the consent of four (4) members of council. Any employee who shall hold a position in a class for which the city manager shall recommend a revision, or a position for which the city manager shall recommend a change in classification, shall be notified of the recommendations to be made prior to their submission to the city council.

(c) The personnel officer shall maintain a current complete file of the classification plan, including all revisions thereto. The classification plan shall be available to any citizen or any employee for examination upon request. Each classified employee shall receive a copy of the job class description for his position and any approved revisions thereto.

(Code 1971, § 15-10)

Charter References: Manager to recommend classification plan, etc., § 42(d).

Sec. 13-32. Scope.

The classification plan shall be so developed and maintained that each position in the classified service shall be assigned to a job class on the basis of the kind and level of its duties and responsibilities to the end that all positions substantially similar with respect to powers, duties and responsibilities are included within the same class and shall have a single descriptive title, the same qualification requirements with respect to experience, capacity, knowledge and skill, the same test of competence, and the same schedule of compensation. Upon the allocation of every position in the classified service to one of the classes, the position title and class so established shall be used in all personnel, fiscal and other records and correspondence of the city.

(Code 1971, § 15-11)

Sec. 13-33. Salaried and hourly employees.

For each job class in the classification plan, a determination shall be made as to whether the position is to be compensated on a fixed salary basis or on the basis of hours of work performed. Compensation on a fixed salary basis shall be provided only to employees holding positions assigned to administrative, executive or professional job classifications.

(Ord. No. 996, 2-23-87)

Secs. 13-34--13-45. Reserved.

ARTICLE III.

APPOINTMENTS AND REMOVAL

DIVISION 1.

GENERALLY

Secs. 13-46--13-55. Reserved.

DIVISION 2.

APPOINTMENTS

Sec. 13-56. Appointment from within service.

In the event that a vacancy occurs in any position established under the classified service, the personnel officer may first ascertain whether any employees in the classified, nonclassified or temporary service is qualified and willing to accept promotion or reassignment. Should the personnel officer determine that no member of the classified, nonclassified or temporary service meets such criteria, he may seek applicants from outside the service by advertisement or such other means as he may deem advisable.
(Code 1971, § 15-12; Ord. No. 1099, 11-9-92; Ord. No. 1113, 1-10-94)

Sec. 13-57. Appointment from without the service.

(a) All applicants for employment shall be required to furnish, on forms provided by the city, complete information as to education, special training, experience and skills, as well as chronological statement of previous employment together with references. When required, a transcript of educational records also shall be provided.

(b) The personnel officer shall make, or cause to be made, such investigation as is necessary to verify the facts contained in the application and shall conduct such oral interviews as he may deem necessary. The personnel officer may conduct such tests and examinations as he may deem necessary.

(c) All new appointments generally shall be made at the minimum pay level of the appropriate grade and all appointments shall be made on the basis of merit only without regard to race, color, sex, national origin, nondisqualifying handicap, age, or political, religious, labor organization affiliation or nonaffiliation.
(Code 1971, § 15-13; Ord. No. 988, 6-10-86)

Sec. 13-58. Probational appointments of new personnel.

All appointments to positions, except as otherwise provided herein, shall be subject to a probationary period of not less than six (6) months or more than one year. The personnel officer may, for cause, extend the probationary period beyond the initial probationary period in increments of six (6) months. During the entire probationary period, the appointee's performance shall be closely reviewed to determine the appointee's ability to carry out assigned tasks, efficiency and other characteristics relative to the requirements of the position. Such a review shall be conducted by the appointee's immediate supervisor and by the personnel officer. If the personnel officer determines that the probational appointee is not satisfactory, the appointment to the job may

be terminated upon two (2) weeks' written notice, unless, in the opinion of the personnel officer, immediate dismissal is warranted. Such release shall not be subject to review or appeal.

Even though an employee's probationary period is extended beyond one (1) year, appointees to the classified service shall, upon completion of one (1) year of service to the city, be entitled to all benefits provided by the city to persons holding regular appointments with the city, except that no in grade increase shall be granted until completion of probation.

Persons appointed to the positions of police cadet and police officer candidate shall not be eligible for regular appointment to the classified service, as set forth hereinabove, but shall continue on probationary appointment until such time as they have been appointed to the position of police officer and have successfully completed a probationary period as required for that position. If, during this extended probationary period, the chief of police determines that the probational appointee is not satisfactory, the personnel officer may terminate the appointment to the job upon two (2) weeks' written notice, unless, in the opinion of the personnel officer, immediate dismissal is warranted. Such release shall not be subject to review. Appointees to the positions of police cadet and police officer candidate, upon completion of one year of satisfactory service with the city shall, however, be entitled to all benefits provided by the city to persons holding regular appointments with the city and may receive such annual in grade pay increases as may be provided by the compensation plan. (Code 1971, § 15-14; Ord. No. 974, 10-15-85; Ord. No. 1114, 1-10-94)

Sec. 13-59. Regular appointments of new personnel.

Upon satisfactory completion of the probationary period, each appointee shall be granted a regular appointment in the classified service. In each case the personnel officer shall include in the appointee's personnel file a statement evaluating the employee's performance during the probationary period. (Code 1971, § 15-15)

Sec. 13-60. Promotional appointments.

An employee who is promoted to a position having greater responsibilities shall be subject to a probationary period in the new position of not less than six (6) months or more than one year. Such an employee shall retain all rights, privileges and benefits of an employee holding a regular appointment and shall retain the same anniversary date for ingrade increases; except that, should the employee fail to fulfill the additional responsibilities of the new position in a satisfactory manner during the probationary period he or she shall be returned to his or her former position. No person appointed to a position vacated by an employee promoted to another position shall receive a regular appointment prior to the promoted employee receiving a regular appointment. (Code 1971, § 15-16; Ord. No. 1054, 6-28-90)

Secs. 13-61–13-70. Reserved.

DIVISION 3.

TERMINATION OF SERVICE

Sec. 13-71. Responsibility of supervisor and personnel officer.

(a) Whenever work habits, attitudes, production, infraction of regulations or personal conduct of an employee fall below a desirable standard, it is the duty of the employee's supervisor to point out the deficiencies to the employee at the time they are observed. Oral or written warning with a sufficient time for improvement should, wherever possible, precede formal discipline. The supervisor shall report, in writing, to the personnel officer every case in which such warning is issued.

(b) If, in the opinion of the personnel officer, discipline is warranted he may reprimand, suspend, demote or discharge any classified employee subject to the provisions of this and other ordinances and the charter.

(Code 1971, § 15-18)

Sec. 13-72. Suspension generally.

The personnel officer may, for disciplinary purposes, suspend a classified employee without pay. However, any suspension may be appealed by the employee to the employee relations board in accordance with Section 36 of the charter and city ordinances.

(Code 1971, § 15-19)

Sec. 13-73. Demotions.

Where the action or performance of a classified employee does not warrant dismissal, or where the nature of the work required of the employee warrants such action, the personnel officer may reduce an employee to an established position in a lower grade or class. Notice of such reduction and provision for appeal by the employee shall be in accordance with Section 36 of the charter and city ordinances.

(Code 1971, § 15-20)

Sec. 13-74. Dismissal.

The personnel officer may dismiss a classified service employee for cause. Notice of such dismissal and provision for appeal by the dismissed employee shall be in accordance with Section 36 of the charter and city ordinances.

(Code 1971, § 15-21)

Sec. 13-75. Suspension during investigation.

During an investigation, hearing or trial of an employee for any civil or criminal charge the personnel officer may, if he deems it to be in the best interest of the city, suspend the employee. The employee shall be notified of such action in accordance with the provisions of Section 36 of the charter.

(Code 1971, § 15-22)

Sec. 13-76. Resignations.

An employee resigning his position shall whenever possible give at least two (2) weeks notice in writing. Whenever the date of departure falls between established pay periods, the employee may be paid on the date of the next consecutive pay day for the time worked.

(Code 1971, § 15-23)

Sec. 13-77. Reemployment of former employees.

In the event a former employee of the city is reemployed within one (1) year from the date of termination of his employment, the personnel officer may reinstate the employee in his former grade and credit him with his prior service with the city and such benefits as are related thereto.

(Code 1971, § 15-24)

Secs. 13-78–13-90. Reserved.

ARTICLE IV.

EMPLOYEE BENEFITS

DIVISION 1.

GENERALLY

Secs. 13-91–13-100. Reserved.

DIVISION 2.

COMPENSATION

Sec. 13-101. Establishment.

The city manager shall recommend a pay plan to the council. The council shall thereafter approve a pay plan by resolution. The rates of pay shall be based on the principle of equal pay for equal work, and variation rates of pay shall be in proportion to substantial differences in the difficulty, responsibility and qualification requirements of the work performed. The pay plan may be amended from time to time as circumstances require.

(Code 1971, § 15-25)

Charter References: Manager to recommend pay plan, § 42(e).

Cross References: Salary of manager, § 2-2.

Sec. 13-102. Salary changes.

(a) The pay plan adopted shall include a minimum and maximum rate for each class of positions. Provision is hereby made for in-grade salary increases, as may be recommended by the city manager and approved by the city council from time to time, for each class of positions until the maximum salary is attained. Prior to the granting of an in-grade salary increase the supervisor of the employee concerned shall certify to the personnel officer that the employee has performed his or her duties in accordance with the requirements of the salary increase from the date of appointment or from the date of last increase.

(b) An in-grade salary increase of four (4) percent shall be granted a new appointee after completion of a probationary period as provided in section 13-58.

(c) A new appointee who has received regular appointment to the classified service after satisfactory completion of a probationary period and who has performed the duties of the position satisfactorily shall be granted an in-grade increase one (1) year after the regular appointment to the classified service and may receive that first increase in less than one (1) year's time, but not less than six (6) months after regular appointment to the classified service if the personnel officer determines that the employee is performing the duties of the position in a superior and above average manner.

(d) If an employee is promoted in grade on the basis of increased duties and responsibilities, the salary increase in conjunction with such promotion shall be not less than four (4) percent nor more than eight (8) percent. When an employee is promoted to another grade, the employee's compensation in that grade shall be five (5) percent greater than the compensation of the former grade ten (10) percent greater if the employee is promoted to a grade three (3) or more grade levels above the former grade. Such promotional appointment, whether in-grade or to another grade, shall be subject to a probational period as provided in section 13-60.

(e) If an employee is demoted or reassigned to a lower grade, the personnel officer shall have the authority to place the employee in any grade in which the new position is classified.

(f) Except as provided hereinabove and excluding cost of living adjustments, an employee who has performed the duties assigned satisfactorily may be granted in-grade salary increases annually from the date of last increase or decrease until such time as the employee's pay rate reaches the maximum set forth in the compensation plan for his or her grade.

(Code 1971, § 15-26, Ord. No. 975, 10-15-85; Ord. No. 988, 6-10-86; Ord. No. 995, 1-27-87; Ord. No. 1054, 6-28-90; Ord. No. 1055, 9-17-90; Ord. No. 1120, 7-11-94; Ord. No. 1206, 10-8-01)

Editors Note: Ord. No. 1054, adopted June 28, 1990, amended § 13-102 of the Code by changing longevity procedures in regard to salary changes. Said ordinance further provided that in order to implement the changes in longevity procedures set out in § 13-102, the following special in-grade salary adjustments shall be made as of July 1, 1990, for employees who have been in a longevity pay step for one or more years, such adjustments to be made without changing the employee's normal anniversary date for in-grade adjustments.

Employees currently in longevity who have completed three (3) years of satisfactory service as of July 1, 1990, shall receive an in-grade increase of four (4) percent;

Employees who have completed two (2) years but less than three (3) years of satisfactory service as of July 1, 1990, shall receive an in-grade increase of two and two-thirds (2 2/3) percent and

Employees who have completed one year but less than two (2) years of satisfactory service as of July 1, 1990, shall receive an in-grade increase of one and one-third (1 1/3) percent.

Thereafter, all employees shall be eligible to receive in-grade salary increases as set forth hereinabove [in § 13-102] on each anniversary date.

Sec. 13-103. Maximum and minimum limits in grade.

No employee in the classified service shall be paid a salary less than the established minimum nor greater than the maximum rates fixed in the compensation plan for the position he holds.

(Code 1971, § 15-27; Ord. No. 1120, 7-11-94; Ord. No. 1206, 10-8-01)

Sec. 13-104. Overtime.

Department heads, in accordance with rules and regulations established by the city manager not in conflict with this chapter and in accordance with appropriations, may authorize overtime work. Overtime work shall consist of work in excess of the normal work day of eight (8) hours or the normal work week of forty (40)

hours, as defined under section 13-26. An employee shall receive compensation for overtime work at the rate of one and one-half (1 1/2) times the employee's regular hourly rate, subject to the following limitations and exceptions:

- (1) Administrative, executive, and professional employees receiving a fixed salary shall not be entitled to receive overtime compensation.
- (2) Police officers performing shift work on a schedule which may exceed forty or be less than forty (40) hours in one week but does not exceed one hundred seventy-one (171) hours in a twenty-eight-day period, shall receive overtime compensation for work only in excess of the scheduled shift work.
- (3) In determining overtime, the number of hours of approved paid leave taken as provided in Division 3 of this article shall be counted in the same manner as if they were hours of work.
- (4) Nonclassified hourly employees shall receive compensation for overtime work at a rate one and one-half (1 1/2) times their regular rate, subject to the same restrictions and limitations as are placed upon classified employees.

(Code 1971, § 15-28; Ord. No. 996, 2-23-87; Ord. No. 1028, 11-14-88; Ord. No. 1064, 3-25-91)

Sec. 13-105. Travel pay.

Employees required to travel or use personally-owned conveyances on official business for the city may be reimbursed to the extent of such use and travel at rates fixed by the city council, but in no event shall such reimbursement be used as means of extending the compensation provisions of this chapter.

(Code 1971, § 15-29)

Sec. 13-106. Salaried employees.

The city manager and administrative, executive and professional classified employees shall be compensated on the basis of a fixed salary for each calendar week in which the employee performs work for the city. However, the personnel officer is authorized to reduce such fixed compensation for each day the employee is absent from work for personal reasons, sickness or disability if the employee is not entitled to take paid leave as authorized in Division 3, "Leave," of this chapter.

(Ord. No. 996, 2-23-87)

Sec. 13-107. Holiday pay.

- (a) Holiday pay shall be provided to all classified employees.

(b) Full-time classified employees who do not work on a holiday shall receive compensation for eight (8) hours of time at the employee's normal hourly rate and, for the purposes of computing overtime, the eight (8) hours of holiday pay shall be considered as hours worked.

(c) Full-time classified employees who do not work on a scheduled shift but who are required to work on a holiday shall receive the holiday compensation as set forth above and shall be paid at the overtime

rate for the hours worked.

(d) Classified employees who work a regular tour of duty of less than eighty (80) hours a pay period shall receive holiday compensation in a ratio to eight (8) hours as the number of hours of their tour of duty is to the eighty (80) hours of duty per pay period of full-time employees.

(e) Police officers performing work on a scheduled shift who are not permitted to receive time off the scheduled work in the week a holiday occurs shall receive eight (8) hours of additional compensation for the week at the overtime rate. Additional overtime compensation shall be paid for any hours worked in excess of the scheduled shift work.

(Code 1971, § 15-48; Ord. No. 1028, 11-14-88)

Sec. 13-108. Compensation for unused leave.

Except for probationary employees, the city shall compensate for any unused annual leave credited to a classified service employee at the time of the employee's resignation, dismissal or death. In the event of resignation or dismissal, such compensation shall be paid in a lump sum to the former employee within fifteen (15) days from date of separation. In case of death, such compensation shall be paid in a lump sum in accordance with the employee's retirement agreement. Upon retirement, as defined by the state retirement system, any classified service employee shall be compensated in a lump sum within fifteen (15) days of his or her retirement for any unused annual leave and for one-fourth (1/4) of any unused sick leave in excess of two hundred forty (240) hours accumulation. The employee's rate of pay immediately prior to his or her termination of employment shall be the rate of payment for any unused leave for which compensation is authorized.

(Code 1971, § 15-42; Ord. No. 1028, 11-14-88)

Secs. 13-109--13-115. Reserved.

DIVISION 3.

LEAVE

Sec. 13-116. Administrative leave.

The personnel officer may grant administrative leave with pay for the purpose of having employees attend professional meetings, technical conferences, short term courses in matters relating to official duties or for other valid purposes. Such leave will not be deducted from any other leave earned by the employee.

(Code 1971, § 15-30; Ord. No. 1028, 11-14-88)

Sec. 13-117. Jury leave.

Any classified service employee called upon for jury service will be reimbursed the difference between payments received as a juror and the employee's regular salary. Such leave will not be deducted from any other leave earned by the employee.

(Code 1971, § 15-31; Ord. No. 1028, 11-14-88)

Sec. 13-118. Military leave.

Any classified service employee who is a member of any United States military reserve or National Guard unit and is required to engage in training exercise will be granted military leave not to exceed one hundred twenty (120) hours in any one year. Such employee shall be reimbursed the difference between payments received from the military unit during such period and the employee's regular salary during such period. Military leave will not be deducted from any other leave earned by the employee.
(Code 1971, § 15-32; Ord. No. 1028, 11-14-88)

Sec. 13-119. Annual leave generally.

(a) All full-time classified service employees of the city serving on a twelve-month annual basis shall be permitted annual leave to be accumulated as follows:

Full-time Employment (Years of Service)	Amount of Leave Per Pay Period (hours)
Up to 3	4
3 to 15	6
Over 15	8

(b) Employees in the three-to-fifteen-year range, earning six (6) hours leave per pay period, shall be granted four (4) additional hours of annual leave on the last full pay period of each fiscal year to attain a total of twenty (20) eight-hour days of annual leave per year. Annual leave may only be taken at the convenience of the city and upon the approval of the personnel officer. An employee appointed from without the classified service shall accrue annual leave during the probationary period but shall not be permitted to take leave until he or she has received a regular appointment.
(Code 1971, § 15-33; Ord. No. 1028, 11-14-88)

Sec. 13-120. Accumulation of annual leave.

All full-time classified service employees may accumulate a total of two hundred forty (240) hours annual leave; provided, however, that not more than eighty (80) hours of annual leave may be accumulated in any one (1) calendar year. Leave in excess of the amount permitted to be accumulated in a calendar year or in excess of two hundred forty (240) hours must be used prior to January 31 of the succeeding calendar year or it shall be lost as annual leave. However, the employee shall be credited with an amount of earned sick leave equal to the amount of unused annual leave lost.
(Code 1971, § 15-34; Ord. No. 1028, 11-14-88)

Sec. 13-121. Sick leave.

(a) All full-time classified service employees of the city serving on a twelve-month annual basis shall be permitted to earn sick leave at the rate of four (4) hours sick leave per pay period or thirteen (13) eight-hour days per year which will begin to accrue from the first day of employment.

(b) There shall be no limit placed upon the amount of sick leave that an employee may accumulate. Any such accumulated sick leave shall remain to the credit of such employee until he or she has been out of active employment with the city for a period of fifty-two (52) weeks, which period is determined to be a break in service.

(c) Sick leave may be taken for the following reasons:

(1) Personal illness.

(2) Family illness not to exceed eighty (80) hours in any one (1) year.

(3) Quarantine.

(4) For the adoption of a child as provided for by administrative regulation(s) pursuant to section 13-128 herein.

(d) The personnel officer may require such evidence as deemed necessary to validate sick leave and shall establish regulations for notification to the city of absences.

(Code 1971, §§ 15-35--15-37; Ord. No. 1028, 11-14-88)

Sec. 13-122. Advance sick and annual leave.

A classified service employee shall be permitted to take only such annual and sick leave as has actually accrued to the employee's credit unless advanced leave is authorized. The personnel officer may approve a maximum of eighty (80) hours of advance sick leave or advance annual leave, or both. For periods of advance sick or annual leave exceeding eighty (80) hours, the approval of the city council shall first be obtained. Upon termination of employment, any employee who has been advanced leave shall reimburse the city for such leave unless waived by the council.

(Code 1971, § 15-38; Ord. No. 1028, 11-14-88)

Sec. 13-123. Family death leave.

In the event of a death in the immediate family of a classified service employee, the personnel officer will grant up to forty (40) hours of leave with pay to the employee. Such leave will not be deducted from any other leave earned by the employee. The personnel officer shall establish such regulations as deemed necessary for the definition of and the notification to the city of absences for deaths in the immediate family.

(Code 1971, § 15-39; Ord. No. 1028, 11-14-88)

Sec. 13-124. Reserved.

Editors Note: Ord. No. 1074, adopted Oct. 28, 1991, repealed former § 13-124, which pertained to temporary disability leave not due to on-the-job injuries and derived from the 1971 Code, § 15-40; and Ord. No. 1028, adopted Nov. 14, 1988.

Sec. 13-125. Leave for part-time classified employees.

All part-time classified service employees of the city whose job classification provides for a regular tour of duty in each pay period shall earn sick leave and annual leave in a ratio to the amount of leave granted to full-time employees as the number of hours of their tour of duty is to the eighty (80) hours of duty per pay period of full-time employees.

(Code 1971, § 15-41; Ord. No. 1028, 11-14-88)

Sec. 13-126. Designated work hours to be counted toward leave.

For full-time classified employees, a day of leave, as referred to in this division, shall equal eight (8) hours of leave. In the accumulation and granting of annual and sick leave to employees, leave shall be charged only for scheduled work hours. If a scheduled workday is either more or less than eight (8) hours, the leave charged to an employee shall be the number of scheduled hours not worked by the employee. Scheduled overtime shall not be considered scheduled work hours and an employee shall not be eligible to take leave for such hours.

(Code 1971, § 15-42; Ord. No. 1028, 11-14-88)

Sec. 13-127. Leave for on-the-job injuries.

The city manager may grant up to four hundred eighty (480) hours administrative leave to an employee injured on the job to such an extent that the employee is unable to work, as determined by a medical practitioner. Such leave shall not be charged against any other earned leave accumulated. During the period of time administrative leave is granted for an on-the-job injury, an employee shall receive compensation at the employee's normal rate of pay, less the amount of any compensation for time off from work by worker's compensation insurance. An employee shall not earn or accumulate sick or annual leave or receive holiday benefits while on administrative leave.

Upon determination of the city manager, and subject to the approval of the employee's medical practitioner, the city manager may require an employee injured on the job to work at such tasks as can be performed without impairing the employee's recovery. Such temporary work assignment need not be related to the employee's regular job assignments and need not be within the employee's assigned department, agency or bureau.

(Code 1971, § 15-46; Ord. No. 1028, 11-14-88; Ord. No. 1041, 7-10-89)

Sec. 13-128. Establishment of administrative regulations.

The personnel officer is empowered to establish administrative regulations to carry out the provisions of this division.

(Code 1971, § 15-44; Ord. No. 1028, 11-14-88)

Sec. 13-129. Leave records.

The personnel officer shall cause to be maintained adequate current records for leave accounting, such records to be a part of the personnel and fiscal records of the city.

(Code 1971, § 15-45; Ord. No. 1028, 11-14-88)

Secs. 13-130–13-140. Reserved.

DIVISION 4.

OTHER BENEFITS

Sec. 13-141. Holidays.

- (a) All classified service employees shall be granted the following paid holidays:

January 1	New Year's Day
The third Monday in January	Martin Luther King, Jr.'s Birthday
The third Monday in February	Washington's Birthday
The last Monday in May	Memorial Day
July 4	Independence Day
September (1st Monday)	Labor Day
November 11	Veteran's Day
November (4th Thursday)	Thanksgiving Day
November (Friday after the 4th Thursday in November)	The day after Thanksgiving
December 25	Christmas Day

When any of the above holidays fall on Saturday or Sunday, the preceding Friday or the following Monday shall be granted as a paid holiday.

(b) All classified employees shall be granted a holiday in appreciation of their service to the city, employee appreciation day. The holiday may only be taken at the convenience of the city and upon the approval of the personnel officer.

(c) Classified employees shall be allowed to take up to four (4) hours annual leave to attend religious services on Good Friday, Yom Kippur and Rosh Hashana.

(d) At the discretion of the personnel officer, administrative leave up to two (2) hours may be granted any classified employee for purposes of voting in any municipal, state or federal election.

(e) No other holidays shall be granted to a classified service employee of the city except by action of the city council.

(Code 1971, § 15-47; Ord. No. 953, 7-17-84; Ord. No. 972, 8-12-85; Ord. No. 979, 12-16-85; Ord. No. 1028, 11-14-88; Ord. No. 1075, 10-28-91; Ord. No. 1121, 7-11-94)

Secs. 13-142--13-144. Reserved.

Editors Note: Ord. No. 1028, adopted Nov. 14, 1988, redesignated the provisions of former §§ 13-142, 13-143 and 13-144, relative to holiday pay and hours of work for classified employees, as §§ 13-107, 13-25 and 13-26 respectively, of this chapter. At the discretion of the editor, §§ 13-142--13-144 have been reserved for future use.

Sec. 13-145. Group life insurance.

(a) All full-time classified service employees shall be eligible to be covered by group life insurance policies in accordance with the provisions of a policy approved by the city council. The cost of the group life insurance coverage shall be borne by the city.

(b) All full-time classified employees and the council of the city shall be eligible to be covered in the amount of twenty-five thousand dollars (\$25,000.00) in any such life insurance program.

(c) The city manager shall be responsible for negotiating any contract for city-sponsored group life insurance policies and shall be responsible for establishing any administrative regulations necessary to carry out the provisions of this section.

(Code 1971, §§ 15-51--15-53; Ord. No. 1027, 11-14-88)

Sec. 13-146. Retirement system.

The city shall participate in the Maryland State Retirement Agency. All classified service employees shall enter into such Maryland State Retirement Agency, subject to the laws of the state and the rules and regulations established by the board of trustees of the Maryland State Retirement Agency, retirement system.

(Code 1971, § 15-54; Ord. No. 1076, 10-28-91)

Sec. 13-147. Deferred compensation.

(a) All classified city employees holding permanent appointments, the city council, and the city manager shall be eligible to participate in any deferred compensation plan established within regulations and guidelines as set forth in state and/or federal laws and approved by the city council. Subject to the requirements of an approved deferred compensation plan, any eligible participant may authorize a portion of his/her compensation to be deferred and deposited into a deferred compensation account. Each participant shall receive a copy of the deferred compensation plan document, and the city manager shall, on behalf of the city, execute all agreements necessary for participation. The city manager shall appoint a three-member deferred compensation committee, of which at least one member shall be a participating employee.

(b) For eligible employees who are members of any State of Maryland retirement or pension system approved by the council, the city shall make payment to an approved deferred compensation plan in an amount equal to the amount declared by the employee as deferred compensation; provided, however, that the maximum matching contribution of the city shall not exceed five (5) percent of the employee's compensation and provided that total deferred contributions from all sources shall not exceed maximum allowable contributions as set forth in federal and/or state laws and/or rules and regulations of the internal revenue service. The funds provided by the city together with all interest and dividends earned from their investment in the plan are for the purpose of providing supplemental income to the employee upon the employee's ordinary or disability retirement from the Maryland retirement or pension system in which the employee participates or in the event of the death of an employee or former employee as supplemental income for the designated beneficiary. Should a participating employee with less than five (5) years of service who is not vested in the Maryland retirement or pension system in which he/she participates terminate city employment, or be terminated for any reason, or should such an employee apply for the payment of deferred compensation for any other reason, the matching contributions of the city together with all interest and dividends earned from their investment in the deferred compensation plan shall be refunded to the city. For an employee who has five (5) or more years of service the matching contributions of the city together with interest and dividends earned on the investment of such contributions shall remain in the deferred compensation plan until such time as the employee is eligible for a pension from the retirement or pension system in which he/she participates or in the event of the death of an employee as supplemental income for the employee's designated beneficiary. Each participating employee shall enter into agreement with the city relating to the limitations set forth herein as to the matching funds provided by the city. The form of the agreement shall be approved by the city council.

(Ord. No. 934, § 15-54A, 1-24-83; Ord. No. 965, 2-25-85; Ord. No. 1045, 10-30-89; Ord. No. 1067, 5-29-91)

Sec. 13-148. Group health insurance.

(a) All full-time classified service employees shall be eligible to participate in a group health plan as established and approved by the city council or in a health maintenance organization in accordance with federal law. The group health plan shall include hospitalization, surgical and major medical benefits. The city shall pay an amount toward the premium for the participation of each classified employee and his/her family or domestic partner and eligible dependents in the group health plan or health maintenance organization as shall be determined by city council motion, and the remainder of the premium cost shall be paid by the employee.

(b) The city manager shall be responsible for establishing any administrative regulations necessary to carry out the provisions of subsection (a).

(Code 1971, § 15-56; Ord. No. 1244, 12-15-03)

Sec. 13-149. Employee benefits; part-time classified employees.

Part-time classified employees shall be eligible to participate in group life insurance as authorized in section 13-145 and group health insurance as authorized in section 13-148, provided that the amount of premium expense paid by the city for full-time classified employees shall be reduced for a part-time classified employee in proportion to the number of hours less than forty (40) hours per week to be worked by the part-time classified employee, and that the part-time classified employee shall pay the difference between the premium expense required by the insurer and the premium expense paid by the city.

(Ord. No. 970, 6-10-85; Ord. No. 1027, 11-14-88)

Sec. 13-150. Group dental benefits.

(a) All full-time classified service employees shall be eligible to participate in a group dental plan as established and approved by the city council. The city shall pay an amount toward the premium for the participation of each classified employee and the employee's family in the group plan.

(b) Part-time classified employees shall be permitted to participate in the group dental plan on the same basis for sharing in the premium expense as is set forth for group life insurance in section 13-149.

(c) The city manager shall be responsible for establishing any administrative regulations necessary to carry out the provisions of subsection (a).

(Ord. No. 982, 3-10-86)

Sec. 13-151. Temporary disability benefits.

(a) All classified service employees shall be able to participate in a temporary disability benefits plan as established and approved by resolution of the city council. The plan shall be provided at no cost to the employee.

(b) The city manager shall be responsible for establishing any administrative regulations necessary to carry out the provisions of the temporary disability benefits plan.

(Ord. No. 1040, 7-10-89)

Sec. 13-152. Cafeteria plan.

Full-time and part-time classified employees shall be eligible to participate in a cafeteria plan, subject to the terms and conditions of such plan, as established and approved by the city council. It is intended that the cafeteria plan shall qualify as a "cafeteria plan" under section 125 of the Internal Revenue Code of 1986, as amended.

(Ord. No. 1063, 12-17-90)

Sec. 13-153. Medical reimbursement plan.

The city shall establish a medical reimbursement plan for full-time and part-time classified employees to be funded by city contributions, subject to a maximum reimbursement for each employee to be established by resolution of the city council. The medical reimbursement plan shall be established in accordance with the requirements applicable to self-insured medical plans as set forth in section 105(h) of the internal revenue code of 1986, as amended.

(Ord. No. 1063, 12-17-90)

Secs. 13-154--13-160. Reserved.

ARTICLE V.

CONDUCT OF EMPLOYEES*

* **Charter References:** Personal interest in contracts, § 69.

Cross References: Use of city vehicle, § 2-1; code of ethics, § 2-106 et seq.

Sec. 13-161. Political activity.

Any city employee may take part in a political movement or actively support candidates for office as an individual citizen; except, that with respect to city elections or election campaigns, he shall not take part in any political movement nor actively support any candidate in any manner other than by casting his own ballot. No employee shall directly or indirectly use or seek to use his official position, authority or influence to control or modify the political action of any other person; nor shall any employee engage in any form of political activity during duty hours.

(Code 1971, § 15-57)

State Law References: Right of police to engage in political activity, Anno. Code of Md., Art. 27, § 728.

Sec. 13-162. Outside employment.

The city manager may, subject to appropriate adjustment in scheduled compensation, permit any such employee to accept other employment not inconsistent with his duties and to receive compensation for such employment.

(Code 1971, § 15-60)

Charter References: Outside employment, § 42(f).

Sec. 13-163. Additional grounds for dismissal.

Violation of any provision of this article shall constitute grounds for immediate dismissal. In addition the following may constitute grounds for dismissal or suspension.

- (1) Incompetence, incapacity or inefficiency in performance of duties.
- (2) Violation of law, official rules, regulations or orders or failure to obey any lawful or reasonable directions when such action amounts to insubordination or serious breach in discipline.
- (3) Conviction of a felony or any offense involving moral turpitude.
- (4) Willful or repeated negligence in performing duties, and conduct unbecoming an employee of the city.
- (5) Conduct subversive of the laws of the state or nation.
- (6) Sustained conduct detrimental to the efficiency and morale of the service.
- (7) Misuse of public funds.
- (8) Falsifying reports or records.
- (9) Intoxication while on duty.
- (10) Misuse, abuse, negligent use or unlawful use of city property.

(Code 1971, § 15-61)

Secs. 13-164--13-173. Reserved.

ARTICLE VI.

EMPLOYEE APPEALS AND GRIEVANCES*

* **Editors Note:** Ord. No. 1212, adopted April 22, 2002, repealed ch. 13, art. VI, §§ 13-176--13-178, in its entirety and enacted new provisions to read as herein set out. Prior to amendment, art. VI pertained to Employee Appeals and derived from Code 1971, § 15-62--15-64.

Sec. 13-174. General.

The purpose of this article is to establish a process for employee appeals and grievances. The city's intention is to try to resolve employee-employer problems at the lowest possible level, before involving the employee relations board. An employee's right to file an appeal or a grievance with the employee relations board is established by this article.

(Ord. No. 1212, 4-22-02)

Sec. 13-175. Notice of dismissal, suspension or demotion.

Upon initiating an action for dismissal, suspension or demotion of an employee holding a position in the classified service, the city manager shall place the charge(s) that motivated the action to dismiss, suspend or demote the employee in writing, and shall serve a copy of the charge(s) upon such employee together with a copy of section 36 of the City Charter and of Article VI, Chapter 13, of the City Code, and a summary of the steps in the reconsideration procedure and the appeal procedure, and the time period(s) for each of the steps. (Ord. No. 1212, 4-22-02)

Sec. 13-176. Right of reconsideration.

(a) An employee, prior to filing a formal appeal pursuant to section 13-177 et seq., may request reconsideration of his/her dismissal, suspension or demotion, by filing such request with the city manager or the city manager's designee in writing no later than ten (10) working days from receipt by employee of the written action dismissing, suspending or demoting the employee. Upon receipt of timely filed request for reconsideration, the city manager shall respond in writing to the employee's request either upholding or modifying said action of dismissal, suspension or demotion no later than ten (10) working days from receipt of the employee's request.

(b) Upon receipt of the city manager's written decision, the employee may further appeal to the employee relations board by filing a written appeal in accordance with subsection 13-178(a) below no later than ten (10) working days from receipt of the manager's written decision.

(c) If a request for reconsideration is filed untimely, the employee has lost his/her right to reconsideration, and the employee's only recourse is to file an appeal under section 13-178(a)(6). (Ord. No. 1212, 4-22-02)

Sec. 13-177. Right of appeal.

In addition to the right to reconsideration, a classified employee holding a regular appointment shall have the right to appeal his/her dismissal, suspension or demotion. Such appeal shall be in writing, in accordance with section 13-178 herein. (Ord. No. 1212, 4-22-02)

Sec. 13-178. Appeals procedure--Dismissal, suspension or demotion.

- (a) (1) If an employee does not request reconsideration pursuant to section 13-176 herein or if the employee does not agree with the city manager's determination of such reconsideration, an employee may appeal his/her dismissal, suspension or demotion to the employee relations board. Such appeal shall be in writing and should include the reason(s) why such employee believes the action of dismissal, suspension or demotion should be modified or overturned. Such appeal shall be filed no later than ten (10) working days from the day the employee receives written notice of such dismissal, suspension or demotion (or ten [10] working days from the written response from the city manager if employee requests reconsideration pursuant to Section 13-176 herein). The board shall take such measures as may be necessary to ensure that the city understands the basis for the appeal.

- (2) Said appeal shall be filed with the city clerk or the city clerk's designee, who shall review said appeal for compliance with this section.
- (3) If such appeal meets the requirements of section 13-178(a)(1), the city clerk shall acknowledge in writing receipt of such appeal and forward a copy of such appeal to the city manager and the employee relations board. Such notification shall be made within three (3) working days of receipt of a proper appeal.
- (4) If the clerk determines such appeal does not meet the requirements of section 13-178(a)(1), the clerk shall notify the employee in writing no later than the close of business on the next working day after receipt of said appeal.
- (5) The determination of the clerk may be appealed to the employee relations board within ten (10) working days of the written notification by the city clerk to the employee.
- (6) If an appeal is not timely filed with the city clerk, the employee relations board may accept such appeal and grant a waiver of the filing requirements for up to thirty (30) additional calendar days from the date the appeal should have been filed. If such time extension still does not make the appeal valid, then the appeal shall be dismissed. The employee relations board shall grant only such extension of time where the employee relations board finds, in writing, that the employee has extenuating circumstances that caused the delay in filing such appeal. A grant of additional time to the employee to remedy a failure to timely file an appeal is not automatic, and the burden is on the employee to convince the employee relations board that there were good and sufficient reasons for the delay in filing the appeal.

(b) Within ten (10) working days after the receipt of a request for appeal, the employee relations board will set a hearing date and notify the city manager and the appellant. If this date is unacceptable to either the manager or the appellant, new dates shall be suggested until both the city manager and the appellant agree on a suitable date. The initial hearing date should be within thirty (30) days of the date the appeal is filed with the city clerk. However, the hearing date may be extended up to sixty (60) calendar days from the date the request for the appeal was filed with the city clerk if both the city manager and the appellant agree.

(c) The employee relations board shall notify, in writing, both the city manager and the appellant of the agreed-upon hearing date. The appellant's notice shall also include a reminder that he/she has the right to be represented by counsel, to present testimony and other evidence, to call witnesses, including city employees, and to cross-examine any witness for the city. The appellant shall also have the right to request a public or private hearing.

(d) The burden of proof for dismissal, suspension, or demotion shall rest with the city manager, who shall be furnished with the services of the city solicitor, or another attorney where appropriate. The city manager shall have the right to present testimony and other evidence, to call witnesses, including city employees, and to cross-examine any witness for the appellant.

(e) Within fifteen (15) working days after the final day of an appeal hearing, the employee relations board shall render its decision in writing to the city council, the city manager, and the appellant. The decision of the employee relations board shall be final and shall stand as the decision of the city.

(Ord. No. 1212, 4-22-02)

Sec. 13-179. Right to grieve.

All classified employees holding regular appointments shall have the right to grieve classification or reclassification, or any unreasonable, abusive, unfair, discriminatory or oppressive treatment or working conditions, or any reprisal arising out of any grievance or testimony before the employee relations board. However, the employee must first bring the complaint to the attention of his/her department head and the city manager by submitting a written complaint in accordance with section 13-180(a). All classified employees shall be furnished a copy of article VI, chapter 13, of the City Code, and a summary of the steps in the grievance procedure, and the time period(s) for each of the steps.

(Ord. No. 1212, 4-22-02)

Sec. 13-180. Grievance procedure.

(a) If the employee wishes to grieve classification or reclassification, or any unreasonable, abusive, unfair, discriminatory or oppressive treatment or working conditions, or any reprisal arising out of any grievance, complaint or testimony before the employee relations board, the employee must notify his/her department head by stating the nature of the grievance in writing. The notification must be received by the department head within thirty (30) calendar days after the employee reasonably should have known that the incident occurred. The department head shall respond to the employee in writing within ten (10) working days. After receiving the department head's response, if the employee wishes to grieve, the employee must notify the city manager by stating the nature of the grievance in writing within ten (10) working days of receiving the written response from the department head or within twenty-five (25) working days from the time the employee notified the department head if a response has not been received from the department head. The city manager shall respond to the employee in writing within ten (10) working days. The department head or the city manager shall promptly acknowledge, to the employee, receipt of the employee's notification to the department head or to the city manager of the grievance. If the employee has not received acknowledgment of the notification within five (5) working days, the employee may inquire about the delay from the department head.

(b) (1) If the employee, after receiving the city manager's response, still wishes to grieve before the employee relations board and has followed the procedures outlined in 13-180(a), he/she must file the grievance with the city clerk, stating the nature of the grievance in writing. The grievance must be received by the city clerk within ten (10) working days of the employee's having received a response from the city manager or within twenty-five (25) working days from the time the employee notified the city manager if a response has not been received from the city manager. If a grievance is filed, the city clerk shall mail or deliver copies of the grievance to the employee relations board and the city manager by the next working day. The city manager shall promptly mail or deliver to the employee relations board copies of all responses to the employee's notification of the grievance.

(2) If either of the notifications to the department head or the city manager, or the grievance to the city clerk, are not filed timely, the employee relations board may grant up to thirty (30) additional calendar days to the time period to file the grievance with the city clerk. The employee relations board shall grant such extension of time only where the employee relations board finds, in writing, that the employee has extenuating circumstances that caused the delay in filing such grievance. In no event may the employee relations board grant an extension of more than thirty

(30) calendar days. If filed later than said thirty (30) calendar days, the employee relations board shall dismiss such grievance as not timely filed. A grant of additional time to the employee to remedy a failure to timely file a grievance is not automatic and the burden is on the employee to convince the employee relations board that there were good and sufficient reasons for the delay in filing the grievance.

(c) Within thirty (30) calendar days after the grievance is filed with the city clerk, the employee relations board shall set a hearing date that is mutually acceptable to the city manager and the employee and so notify all the foregoing parties. However, the grievance hearing may be extended up to sixty (60) calendar days from the date the grievance was filed with the city clerk if both the city manager and the employee agree on the extension. The grievant shall have the right to a public or private hearing.

(d) The burden of proving the grievance shall rest with the employee. The employee shall have the right to be represented by counsel, to present testimony and other evidence, to call witnesses, including city employees, and to cross-examine any witness for the city.

(e) The city manager, who may be furnished with the services of the city solicitor or another attorney, where appropriate, shall have the right to present testimony and other evidence, to call witnesses, including city employees, and to cross-examine any witness for the grievant.

(f) Within fifteen (15) working days after the final day of a grievance hearing, the employee relations board shall make, in writing, findings and recommendations thereon, and copies shall be provided to the employee, the city manager, and the city council. These findings and recommendations are not binding upon the city. To the extent possible, the council will respond within sixty (60) calendar days after receipt of the recommendation of the employee relations board. The city will notify the employee, the city manager, and the employee relations board of the council's disposition of the board's recommendations.
(Ord. No. 1212, 4-22-02)

ARTICLE VII.

PUBLIC OFFICIALS AND EMPLOYEES LIABILITY AND INDEMNITY FUND*

* **Editors Note:** Ord. No. 1084, § 1, adopted April 20, 1992, amended the Code by providing for a new Chapter 20, pertaining to the public officials and employees liability and indemnity policy. In order to comply with the general style and format of the Code, said ordinance has been redesignated by the editor as Article VII of chapter 13, substantive sections being §§ 13-181--13-187, 13-191--13-194, 13-201, 13-202, 13-206, 13-211, 13-212 and 13-216.

DIVISION 1.

GENERALLY

Sec. 13-181. Definitions.

Arising out of the course and scope of employment means arising out of the performance for the city of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority and shall not include any action which occurs during a

period of time in which the employee is engaged in outside employment or is rendering contractual services to someone other than the city. The term shall not include the operation of a city vehicle for an unauthorized use.

Employee means a person in the paid or unpaid service of the city and includes:

- (1) An officer, agent, volunteer, or employee;
- (2) A former officer, agent, volunteer, or employee; and
- (3) The estate of an officer, agent, volunteer, or employee or former officer, agent, volunteer, or employee of the city.

The term "employee" does not include an independent contractor, an agent or employee of an independent contractor, or a person who performs tasks the details of which the city does not have legal right to control.

Officer means any elected or appointed official of the city, including any member of the city council or any board or commission of the city who exercise responsibilities beyond those that are advisory in nature.

Expenses means, without limitation, attorney's fees, court costs, expert witness fees, judgments, damages, fines, penalties, and reasonable costs actually incurred by the employee in connection with the proceeding.

Conflict of interest means such a juxtaposition of interests, claims, defenses, or issues between the city or its employees, which, under known or probable facts, would cause an ethical violation in the event of dual representation by a single attorney.
(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-182. Notice by employee required.

The provisions of this article shall apply only where the city solicitor has been given written notice of the action brought against the employee within fifteen (15) calendar days of service of process upon the employee.
(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-183. Disciplinary actions.

Nothing in this article shall prevent the city from taking any disciplinary action against any employee for conduct defended or indemnified by the city under this section, either before or after conclusion of the suit.
(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-184. Suit on behalf of city.

Nothing in this article shall require the city to indemnify any employee for recoveries made against him or her in suits brought by or on behalf of the city. The city manager may, however, authorize representation and indemnification of any employee in a suit brought by a taxpayer on behalf of the city against the employee.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-185. Subrogation.

If payment or legal representation is provided under this article, the city is subrogated to the employee's rights for recovery against any person or organization to the extent of the city's liability and payments, and the employee must execute and deliver to the city solicitor whatever documents are necessary to secure those rights. The employee must not do anything after a loss to prejudice those rights.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-186. No creation of cause of action.

Nothing contained in this article shall be construed as creating a right or cause of action against an employee nor as giving a right to a third party to institute or maintain a suit which would not otherwise exist under law as a legal claim against an employee.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-187. Coverage available only after exhaustion of other insurance.

The indemnification and defense provided for herein shall only attach and become available after all other insurance for such indemnification or defense has been exhausted.

(Ord. No. 1084, § 1, 4-20-92)

Secs. 13-188–13-190. Reserved.

DIVISION 2.

INDEMNIFICATION

Sec. 13-191. Scope.

Any employee who is threatened to be made, becomes, or is liable for the payment of any claims or damages as a result of being named a defendant or respondent in a proceeding, whether civil, criminal, administrative, arbitral, or investigative, including all appeals, arising out of the course and scope of employment shall be entitled to indemnification of all expenses by the city, provided that the acts or omissions resulting in such liability:

- (1) Were done in good faith;
- (2) Were done without malicious or felonious intent;
- (3) Did not constitute official misconduct;
- (4) Were not willful or wrongful acts or omission committed intentionally with knowledge of wrongdoing;

(5) Did not constitute gross negligence; and

(6) Were not for personal benefit improperly obtained or received.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-192. Entitlement.

Entitlement to indemnification shall be presumed unless the city manager, upon advice of the city solicitor, determines that the employee is not entitled for reasons stated in (1) through (6) above. Such determination shall be final for the purposes of the representation and indemnity afforded by this section; provided, however, that in the event such representation and indemnity have been denied, if after a trial on the merits the city manager, upon advice of the city solicitor, determines that the employee was entitled to indemnification, the indemnification hereunder shall be granted, and expenses incurred in the defense of the claim or suit shall be reimbursed. The decision of the city solicitor not to defend a public official or employee is not admissible as evidence in any legal action or special proceeding and no reference thereto may be made in any trial or hearing.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-193. Investigation.

Efforts shall be made by the city solicitor to determine whether a conflict of interest exists at the time notice of claim or suit is received. If it is determined that a conflict or potential conflict exists, the city solicitor shall so advise the city manager who shall authorize the use of outside counsel for the employee.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-194. Settlement.

The city shall not be liable for any settlement of any such claim or suit effected without its consent, and the city reserves the right to assert any defense and make any settlement of any claim or suit that it deems expedient.

(Ord. No. 1084, § 1, 4-20-92)

Secs. 13-195--13-200. Reserved.

DIVISION 3.

REPRESENTATION IN ACTIONS

Sec. 13-201. Solicitors.

The city shall have the right and duty to provide legal representation through the city solicitor, outside legal counsel, or insurance-selected counsel, to any employee sued in connection with any claim for damages or other civil action against such person arising out of the course and scope of employment, provided that such employee is entitled to indemnification as set forth above. Such legal representation shall be provided at no cost to the employee, and any employee may have his or her own counsel assist in the defense at the sole expense of the employee. The employee shall cooperate fully with the city in preparation and presentation of the case,

including attendance at hearings and trials, securing and giving evidence, and obtaining attendance of witnesses; the failure to cooperate shall waive such employee's right to representation and indemnity under this section.

Notwithstanding the provisions of this section, the city solicitor may decline to represent a public official or employee who retains private counsel. Nothing in this section shall be construed to deprive any public official or employee of the right to select counsel of his own choice at his own expense, nor does this section prevent the city solicitor from entering his appearance in a case to protect the interests of the city even though no request for such appearance has been forthcoming from the public official or employee named as a defendant.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-202. Statements.

No employee shall, except upon advice of the city solicitor's office, give any oral or written statement or enter into any stipulation or agreement concerning a claim or lawsuit; nor, except at his own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a claim or lawsuit without the consent of the city.

(Ord. No. 1084, § 1, 4-20-92)

Secs. 13-203--13-205. Reserved.

DIVISION 4.

CITY'S DEFENSES

Secs. 13-206--13-210. Reserved.

DIVISION 5.

FINAL ADJUDICATION

Sec. 13-211. Special verdict.

In any action or proceeding against a public official or employee that results in a final judgment or other disposition, the court or jury shall return a special verdict in the form of written findings which determine:

- (1) If the public official or employee was acting within the scope of his employment;
- (2) If the alleged act or omission by the public official or employee was malicious or grossly negligent;
- (3) If the defense of the sovereign immunity is available to the public official or employee.

(Ord. No. 1084, § 1, 4-20-92)

Sec. 13-212. Judgment for public official or employee.

(a) In an action or proceeding against a public official or employee, if a judgment is rendered in favor of the public official or employee, the city shall request the court to require the moving party to pay the city or the public official or employee, as the case may be, the amount of the cost thereof and the reasonable expenses incurred, including reasonable attorney's fees, if the court finds that the action or proceeding was instituted:

- (1) In bad faith; or
- (2) Without substantial justification.

(b) The court shall require the moving party to pay the cost and expenses directly to the city.
(Ord. No. 1084, § 1, 4-20-92)

Secs. 13-213–13-215. Reserved.

DIVISION 6.

GOVERNMENTAL IMMUNITY

Sec. 13-216. No waiver.

(a) Nothing in this article shall be construed as waiving the city's defense of governmental immunity to it or to its employee in any action brought against the city or such employee.

(b) Nothing herein contained shall be construed as a waiver by the city of its defense of governmental immunity.
(Ord. No. 1084, § 1, 4-20-92)